

E AND R AMENDMENTS TO LB 355

Introduced by Enrollment and Review Committee: Nordquist, 7,  
Chairperson

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 28-1422, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           28-1422 Every person, partnership, limited liability  
6 company, or corporation desiring a license under sections 28-1420  
7 to 28-1429 shall file with the clerk or finance department of  
8 the city, town, or village where his, her, their, or its place  
9 of business is located, if within the limits of a city, town,  
10 or village, or with the clerk of the county where such place of  
11 business is located, if outside the limits of any city, town, or  
12 village, a written application stating the name of the person,  
13 partnership, limited liability company, or corporation for whom  
14 such license is desired and the exact location of the place of  
15 business and shall deposit with such application the amount of the  
16 license fee provided in section 28-1423. If the applicant is an  
17 individual, the application shall include the applicant's social  
18 security number. If the applicant is the owner of a cigar bar as  
19 defined in section 53-103 which allows smoking, the application, if  
20 other than an initial application, shall include proof of the cigar  
21 bar's annual gross revenue. A copy of the proof of gross revenue  
22 shall also be sent to the Nebraska Liquor Control Commission.

23           Sec. 2. Section 53-101, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 53-101 Sections 53-101 to 53-1,122 and section 4 of this  
3 act shall be known and may be cited as the Nebraska Liquor Control  
4 Act.

5 Sec. 3. Section 53-103, Revised Statutes Cumulative  
6 Supplement, 2008, is amended to read:

7 53-103 For purposes of the Nebraska Liquor Control Act,  
8 unless the context otherwise requires:

9 (1) Alcohol means the product of distillation of any  
10 fermented liquid, whether rectified or diluted, whatever the origin  
11 thereof, and includes synthetic ethyl alcohol and alcohol processed  
12 or sold in a gaseous form. Alcohol does not include denatured  
13 alcohol or wood alcohol;

14 (2) Spirits means any beverage which contains alcohol  
15 obtained by distillation, mixed with water or other substance  
16 in solution, and includes brandy, rum, whiskey, gin, or other  
17 spirituous liquors and such liquors when rectified, blended, or  
18 otherwise mixed with alcohol or other substances;

19 (3) Wine means any alcoholic beverage obtained by the  
20 fermentation of the natural contents of fruits or vegetables,  
21 containing sugar, including such beverages when fortified by the  
22 addition of alcohol or spirits;

23 (4) Beer means a beverage obtained by alcoholic  
24 fermentation of an infusion or concoction of barley or other grain,  
25 malt, and hops in water and includes, but is not limited to, beer,  
26 ale, stout, lager beer, porter, and near beer;

27 (5) Alcoholic liquor includes alcohol, spirits, wine,

1 beer, and any liquid or solid, patented or not, containing alcohol,  
2 spirits, wine, or beer and capable of being consumed as a beverage  
3 by a human being. Alcoholic liquor also includes confections or  
4 candy with alcohol content of more than one-half of one percent  
5 alcohol. The act does not apply to (a) alcohol used in the  
6 manufacture of denatured alcohol produced in accordance with acts  
7 of Congress and regulations adopted and promulgated pursuant to  
8 such acts, (b) flavoring extracts, syrups, medicinal, mechanical,  
9 scientific, culinary, or toilet preparations, or food products  
10 unfit for beverage purposes, but the act applies to alcoholic  
11 liquor used in the manufacture, preparation, or compounding of such  
12 products or confections or candy that contains more than one-half  
13 of one percent alcohol, or (c) wine intended for use and used by  
14 any church or religious organization for sacramental purposes;

15 (6) Near beer means beer containing less than one-half of  
16 one percent of alcohol by volume;

17 (7) Original package means any bottle, flask, jug, can,  
18 cask, barrel, keg, hogshead, or other receptacle or container  
19 used, corked or capped, sealed, and labeled by the manufacturer of  
20 alcoholic liquor to contain and to convey any alcoholic liquor;

21 (8) Manufacturer means every brewer, fermenter,  
22 distiller, rectifier, winemaker, blender, processor, bottler,  
23 or person who fills or refills an original package and others  
24 engaged in brewing, fermenting, distilling, rectifying, or bottling  
25 alcoholic liquor, including a wholly owned affiliate or duly  
26 authorized agent for a manufacturer;

27 (9) Nonbeverage user means every manufacturer of any

1 of the products set forth and described in subsection (4) of  
2 section 53-160, when such product contains alcoholic liquor, and  
3 all laboratories, hospitals, and sanatoria using alcoholic liquor  
4 for nonbeverage purposes;

5 (10) Manufacture means to distill, rectify, ferment,  
6 brew, make, mix, concoct, process, blend, bottle, or fill an  
7 original package with any alcoholic liquor and includes blending  
8 but does not include the mixing or other preparation of drinks for  
9 serving by those persons authorized and permitted in the act to  
10 serve drinks for consumption on the premises where sold;

11 (11) Wholesaler means a person importing or causing to be  
12 imported into the state or purchasing or causing to be purchased  
13 within the state alcoholic liquor for sale or resale to retailers  
14 licensed under the act, whether the business of the wholesaler is  
15 conducted under the terms of a franchise or any other form of an  
16 agreement with a manufacturer or manufacturers, or who has caused  
17 alcoholic liquor to be imported into the state or purchased in  
18 the state from a manufacturer or manufacturers and was licensed  
19 to conduct such a business by the commission on May 1, 1970, or  
20 has been so licensed since that date. Wholesaler does not include  
21 any retailer licensed to sell alcoholic liquor for consumption off  
22 the premises who sells alcoholic liquor other than beer or wine  
23 to another retailer pursuant to section 53-175, except that any  
24 such retailer shall obtain the required federal wholesaler's basic  
25 permit and federal wholesale liquor dealer's special tax stamp.  
26 Wholesaler includes a distributor, distributorship, and jobber;

27 (12) Person means any natural person, trustee,

1 corporation, partnership, or limited liability company;

2 (13) Retailer means a person who sells or offers for sale  
3 alcoholic liquor for use or consumption and not for resale in any  
4 form except as provided in section 53-175;

5 (14) Sell at retail and sale at retail means sale for use  
6 or consumption and not for resale in any form except as provided in  
7 section 53-175;

8 (15) Commission means the Nebraska Liquor Control  
9 Commission;

10 (16) Sale means any transfer, exchange, or barter in any  
11 manner or by any means for a consideration and includes any sale  
12 made by any person, whether principal, proprietor, agent, servant,  
13 or employee;

14 (17) To sell means to solicit or receive an order for, to  
15 keep or expose for sale, or to keep with intent to sell;

16 (18) Restaurant means any public place (a) which is kept,  
17 used, maintained, advertised, and held out to the public as a place  
18 where meals are served and where meals are actually and regularly  
19 served, (b) which has no sleeping accommodations, and (c) which  
20 has adequate and sanitary kitchen and dining room equipment and  
21 capacity and a sufficient number and kind of employees to prepare,  
22 cook, and serve suitable food for its guests;

23 (19) Club means a corporation (a) which is organized  
24 under the laws of this state, not for pecuniary profit, solely  
25 for the promotion of some common object other than the sale or  
26 consumption of alcoholic liquor, (b) which is kept, used, and  
27 maintained by its members through the payment of annual dues, (c)

1 which owns, hires, or leases a building or space in a building  
2 suitable and adequate for the reasonable and comfortable use and  
3 accommodation of its members and their guests, and (d) which  
4 has suitable and adequate kitchen and dining room space and  
5 equipment and a sufficient number of servants and employees for  
6 cooking, preparing, and serving food and meals for its members  
7 and their guests. The affairs and management of such club shall  
8 be conducted by a board of directors, executive committee, or  
9 similar body chosen by the members at their annual meeting, and  
10 no member, officer, agent, or employee of the club shall be paid  
11 or shall directly or indirectly receive, in the form of salary or  
12 other compensation, any profits from the distribution or sale of  
13 alcoholic liquor to the club or the members of the club or its  
14 guests introduced by members other than any salary fixed and voted  
15 at any annual meeting by the members or by the governing body of  
16 the club out of the general revenue of the club;

17 (20) Hotel means any building or other structure (a)  
18 which is kept, used, maintained, advertised, and held out to  
19 the public to be a place where food is actually served and  
20 consumed and sleeping accommodations are offered for adequate  
21 pay to travelers and guests, whether transient, permanent, or  
22 residential, (b) in which twenty-five or more rooms are used for  
23 the sleeping accommodations of such guests, and (c) which has one  
24 or more public dining rooms where meals are served to such guests,  
25 such sleeping accommodations and dining rooms being conducted in  
26 the same buildings in connection therewith and such building or  
27 buildings or structure or structures being provided with adequate

1 and sanitary kitchen and dining room equipment and capacity;

2 (21) Nonprofit corporation means any corporation  
3 organized under the laws of this state, not for profit, which has  
4 been exempted from the payment of federal income taxes;

5 (22) Minor means any person, male or female, under  
6 twenty-one years of age, regardless of marital status;

7 (23) Brand means alcoholic liquor identified as the  
8 product of a specific manufacturer;

9 (24) Franchise or agreement, with reference to the  
10 relationship between a manufacturer and wholesaler, includes one or  
11 more of the following: (a) A commercial relationship of a definite  
12 duration or continuing indefinite duration which is not required  
13 to be in writing; (b) a relationship by which the wholesaler is  
14 granted the right to offer and sell the manufacturer's brands by  
15 the manufacturer; (c) a relationship by which the franchise, as an  
16 independent business, constitutes a component of the manufacturer's  
17 distribution system; (d) a relationship by which the operation  
18 of the wholesaler's business is substantially associated with  
19 the manufacturer's brand, advertising, or other commercial symbol  
20 designating the manufacturer; and (e) a relationship by which the  
21 operation of the wholesaler's business is substantially reliant on  
22 the manufacturer for the continued supply of beer;

23 (25) Territory or sales territory means the wholesaler's  
24 area of sales responsibility for the brand or brands of the  
25 manufacturer;

26 (26) Suspend means to cause a temporary interruption of  
27 all rights and privileges of a license;

1           (27) Cancel means to discontinue all rights and  
2 privileges of a license;

3           (28) Revoke means to permanently void and recall all  
4 rights and privileges of a license;

5           (29) Generic label means a label which is not protected  
6 by a registered trademark, either in whole or in part, or to  
7 which no person has acquired a right pursuant to state or federal  
8 statutory or common law;

9           (30) Private label means a label which the purchasing  
10 wholesaler or retailer has protected, in whole or in part, by  
11 a trademark registration or which the purchasing wholesaler or  
12 retailer has otherwise protected pursuant to state or federal  
13 statutory or common law;

14           (31) Farm winery means any enterprise which produces and  
15 sells wines produced from grapes, other fruit, or other suitable  
16 agricultural products of which at least seventy-five percent of  
17 the finished product is grown in this state or which meets the  
18 requirements of section 53-123.13;

19           (32) Campus, as it pertains to the southern boundary of  
20 the main campus of the University of Nebraska-Lincoln, means the  
21 south right-of-way line of R Street and abandoned R Street from  
22 10th to 17th streets;

23           (33) Brewpub means any restaurant or hotel which produces  
24 on its premises a maximum of ten thousand barrels of beer per year;

25           (34) Manager means a person appointed by a corporation to  
26 oversee the daily operation of the business licensed in Nebraska. A  
27 manager shall meet all the requirements of the act as though he or

1 she were the applicant, except for residency and citizenship;

2 (35) Shipping license means a license granted pursuant to  
3 section 53-123.15;

4 (36) Sampling means consumption on the premises of a  
5 retail licensee of not more than five samples of one fluid ounce or  
6 less of alcoholic liquor by the same person in a twenty-four-hour  
7 period;

8 (37) Microbrewery means any small brewery producing a  
9 maximum of ten thousand barrels of beer per year;

10 (38) Craft brewery means a brewpub or a microbrewery;

11 (39) Local governing body means (a) the city council or  
12 village board of trustees of a city or village within which the  
13 licensed premises are located or (b) if the licensed premises are  
14 not within the corporate limits of a city or village, the county  
15 board of the county within which the licensed premises are located;

16 (40) Consume means knowingly and intentionally drinking  
17 or otherwise ingesting alcoholic liquor; and

18 (41) Microdistillery means a distillery located in  
19 Nebraska that is licensed to distill liquor on the premises of the  
20 distillery licensee and produces ten thousand or fewer gallons of  
21 liquor annually; and-

22 (42) Cigar bar means a holder of a Class C liquor license  
23 which does not sell food, which, in addition to selling alcohol,  
24 annually receives ten percent or more of its gross revenue from  
25 the sale of cigars and other tobacco products and tobacco-related  
26 products, except from the sale of cigarettes as defined in section  
27 69-2702, and which has a walk-in humidor on the premises.

1           Sec. 4. No county resolution or city ordinance that  
2 prohibits smoking in indoor areas shall apply to cigar bars as  
3 defined in section 53-103.

4           Sec. 5. Section 71-5730, Revised Statutes Cumulative  
5 Supplement, 2008, is amended to read:

6           71-5730 The following indoor areas are exempt from  
7 section 71-5729:

8           (1) Guestrooms and suites that are rented to guests and  
9 are designated as smoking rooms, except that not more than twenty  
10 percent of rooms rented to guests in an establishment may be  
11 designated as smoking rooms. All smoking rooms on the same floor  
12 shall be contiguous, and smoke from such rooms shall not infiltrate  
13 into areas where smoking is prohibited under the Nebraska Clean  
14 Indoor Air Act;

15           (2) Indoor areas used in connection with a research  
16 study on the health effects of smoking conducted in a scientific  
17 or analytical laboratory under state or federal law or at a  
18 college or university approved by the Coordinating Commission for  
19 Postsecondary Education; and

20           (3) Tobacco retail outlets; ~~and-~~

21           (4) Cigar bars as defined in section 53-103.

22           Sec. 6. This act becomes operative on June 1, 2009.

23           Sec. 7. Original section 28-1422, Reissue Revised  
24 Statutes of Nebraska, and sections 53-101, 53-103, and 71-5730,  
25 Revised Statutes Cumulative Supplement, 2008, are repealed.

26           Sec. 8. Since an emergency exists, this act takes effect  
27 when passed and approved according to law.

1                   2. On page 1, line 3, strike "and 53-103" and insert  
2     ", 53-103, and 71-5730" and after the semicolon insert "to change  
3     provisions relating to Class C liquor licenses;".